No. 88-709

Supreme Court, U.S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

JOHN ROE,
Petitioner,

VS.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MARIN,
Respondent,

SHERRY DOE,
Real Party in Interest.

On Writ of Certiorari to the California Court of Appeal, First Appellate District, Division 4

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

In her Brief in Opposition, Real Party in Interest makes several contentions which challenge the Court's jurisdiction to hear this matter. As Petitioner will explain, these contentions are incorrect. The Court should grant the Petition for Writ of Certiorari, to consider this case in light of *Michael H. and Victoria D. v. Gerald D.*

I

PETITIONER PROPERLY AND TIMELY RAISED THE CONSTITUTIONAL ISSUE

Real Party in Interest first contends, at pages 10-12 of her Brief, that Petitioner did not raise the constitutionality of Evidence Code section 621 in a timely fashion. This contention must be questioned on its own merits, since Real Party, and not

Petitioner, has claimed that Evidence Code section 621 is unconstitutional. Petitioner has always maintained that the statute is both constitutional and dispositive of this controversy.

In any event, the record reveals that Petitioner has argued the constitutionality of this legislation from the very outset of this case. Both the trial judge and the Court of Appeal have discussed the constitutional issue in great detail. Petitioner has set forth the seminal holdings of these Courts in his Petition.

Real Party nonetheless claims that Petitioner did not specifically urge application of a rational relationship standard of constitutional review until after the Court of Appeal issued its opinion. Real Party's argument is inaccurate, since Petitioner argued the inapplicability of a strict scrutiny balancing test standard long before the Court of Appeal filed its opinion which is the subject of this Petition. For example, Petitioner specifically wrote, at page 10, lines 7-10 of his Reply Brief in Support of Writ Petition, filed September 4, 1987, the "The balancing test does not apply to a claim by a mother like [Real Party in Interest], since Evidence Code section 621(d) affords her a statutory remedy."

In sum, Petitioner has timely raised, and properly preserved, the constitutional issues.

II

REAL PARTY IN INTEREST DID NOT COMPLY WITH THE STATUTE

Real Party also suggests that this case may be resolved without reaching the constitutionality of Evidence Code section 621, based upon the fact that Real Party possessed blood typing, taken before the child in question was two years old, which allegedly excluded the paternity of her husband James. Petitioner has already responded to this argument at Pages 5-6, footnote 2 of this Petition.

As Petitioner noted, Real Party did not comply with the requirements of Evidence Code section 621, nor did she ever explain to the court why she had failed to do so. Accordingly, both the trial court and the Court of Appeal based their decisions

exclusively on the constitutionality of the code section. Only the constitutional question is before this Court, since Real Party did not utilize her available statutory remedy.

III

THE CALIFORNIA LEGISLATURE HAS RESOLVED THE POLICY ISSUES WHICH REAL PARTY SEEKS TO RAISE AS CONSTITUTIONAL QUESTIONS

Real Party in Interest raises numerous public policy issues in support of her position that Evidence Code section 621 is unconstitutional. Primary among these issues are her assertions that (1) the child should have a right to know the identity of her biological father, and (2) the biological father should be paying child support. Both of these positions assume, without any evidentiary record, that someone other than James Conrad is the child's biological father.

Petitioner has addressed these matters in the Petition, where he discussed the fact that Evidence Code section 621 is consistent with public policy. In addition, as Petitioner wrote, the Legislature considered at length the important underlying social issues when it enacted the current form of the statute. Petitioner submits that the Legislature reached an appropriate resolution, which is well within the limitations of constitutional due process.

CONCLUSION

Petitioner respectfully requests that the Court grant certiorari.

DATED: December 8, 1988

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